

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PITTSFIELD GENERATING COMPANY, L.P.,

Plaintiff,

V.

DEVON CANADA CORPORATION,

Defendant.

CIVIL ACTION
NO. 04-30128-MAP

REQUEST FOR EXPEDITED HEARING ON PENDING MOTIONS

Pittsfield Generating Company, L.P. (“PGC”) requests a hearing on Defendant Devon Canada Corporation’s (“Devon”) Motion to Dismiss For Lack of Personal Jurisdiction and Forum Non Conveniens and Motion to Stay For Deference To A Pending Foreign Proceeding.

PGC requests the Court to schedule the hearing on an expedited basis because Devon has ceased to supply natural gas to PGC pursuant to the parties' Natural Gas Purchase and Sale Agreement ("Gas Purchase Agreement"). Devon's supply obligation under the Gas Purchase Agreement is approximately nine (9) million cubic feet of natural gas per day. Devon's refusal to supply gas is causing PGC's financial loss that accrues in excess of C\$26,000 per day. See Affidavit of Henry Assen, Devon's Vice-President of Marketing, attached. Each month that passes causes PGC damages in excess of C\$750,000.

Under these circumstances, PGC respectfully requests an expedited hearing on pending motions.

PITTSFIELD GENERATING COMPANY, L.P.

By its attorneys,

/s/ David A. Brown

Robert J. Muldoon, BBO# 359480

David A. Brown, BBO# 556161

Jill M. Brannelly, BBO# 655474

Sherin and Lodgen LLP

101 Federal Street

Boston, Massachusetts 02110

(617) 646-2000

Dated: October 22, 2004

CERTIFICATE OF SERVICE

I, David A. Brown, hereby certify that I have on this 22nd day of October, 2004, caused a copy of the foregoing to be served upon all counsel of record by First Class Mail:

/s/ David A. Brown

David A. Brown

Action No. 0401-10854
Deponent: Henry H. Assen
Sworn the 6th day of October, 2004

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

DEVON CANADA CORPORATION

Plaintiff

- and -

PE-PITTSFIELD, LLC and PUREENERGY I, LLC, both carrying on business under the firm name and style of PITTSFIELD GENERATING COMPANY, LP and the said PITTSFIELD GENERATING COMPANY, LP, ALTRESCO, INC. (sometimes known as ALTRESCO INCORPORATED) carrying on business under the firm name and style of PITTSFIELD GENERATING COMPANY, LP (formerly known as ALTRESCO PITTSFIELD, LP) and the said PITTSFIELD GENERATING COMPANY, LP (formerly known as ALTRESCO PITTSFIELD, LP)

Defendants

AFFIDAVIT

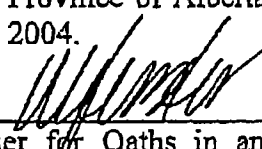
I, HENRY ASSEN, of the City of Calgary, in the Province of Alberta, Businessman, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Vice President, Marketing of the Plaintiff Devon Canada Corporation ("Devon") and as such have a personal knowledge of the facts and matters hereinafter deposed to except where stated to be based upon information and belief, and where so stated I do verily believe the same to be true.
2. On October 5, 2004, Devon received the letter of October 4, 2004 from Pittsfield Generating Company, L.P. ("PGC") a copy of which is now shown to me and marked as Exhibit "A" to this my Affidavit.

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3. On October 5, 2004, Devon sent to PGC a Notice of Termination of deliveries of gas under the subject Gas Purchase Agreement effective as of 8:00 a.m. Calgary time on October 8, 2004. A copy of such Notice is now shown to me and marked as Exhibit "B" to this my Affidavit.
4. For the twelve month period of October, 2003 to September, 2004, the price at Empress, Alberta under the said Gas Purchase Agreement was \$4.091/gigajoule whereas the price as reported by the Canadian Gas Price Reporter at Empress, Alberta over the same time frame was \$6.165/gigajoule. Based on the contract deliveries over that same period, the difference in value between the pricing under the Gas Purchase Agreement as opposed to a market price is approximately \$26,000 per day.
5. I make this my Affidavit in opposition to PGC's application for an order for a stay of this Action pending the determination of an appeal of the Order of the Honourable Justice B.E. Mahoney dated September 13, 2004.

SWORN BEFORE ME at the City of)
 Calgary, in the Province of Alberta, this 6th)
 day of October, 2004.)


 A Commissioner for Oaths in and for the)
 Province of Alberta)


 HENRY H. ASSEN)

MELANIE FERSTER
 Commissioner for Oaths in and for
 the Province of Alberta
 Expiry Date: May 15, 2006

PE - Pittsfield, L.L.C.

1732 West Genesee Street
Syracuse, NY 13202
Tel. (315) 448-2266
Fax (315) 448-0264

VIA FACSIMILE AND FIRST CLASS MAIL

October 4, 2004

Mr. Henry H. Assen
Devon Canada Corporation
1600, 324 - 8th Avenue S.W.
Calgary, Alberta T2P 2Z5
Canada

Re: Pittsfield Project: Termination of Power Purchase Agreements

Dear Henry:

I am writing to advise you that the two power purchase agreements between Pittsfield Generating Company, L.P. ("PGC") and Commonwealth Electric Company and Cambridge Electric Light Company were terminated effective as of 12:00:01 am on October 1, 2004.

With respect to your letter dated September 15, 2004 to Shawmut Bank Connecticut National Association stating that Devon intends to terminate its Gas Purchase Agreement ("GPA") with PGC, please be advised that any such termination by Devon would violate the terms of the GPA. Should Devon cease delivering gas in accordance with the GPA, PGC will hold Devon fully responsible for any and all damages that accrue to PGC.

Very truly yours,

PITTSFIELD GENERATING COMPANY, L.P.

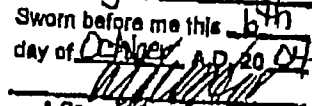
By: PE - Pittsfield, L.L.C., its sole general partner

By:


Donald W. Scholl

cc:

Carsten Jensen (w/o enc.)
David Brown (w/o enc.)

THIS IS EXHIBIT A
referred to in the Affidavit of
Henry H. Assen
Sworn before me this 6th
day of October, A.D. 20 04

A Commissioner for Oaths
in and for the Province of Alberta

MELANIE FERSTER
Commissioner for Oaths in and for
the Province of Alberta
Expiry Date: May 15, 20 06

devon.

Devon Canada Corporation
2000, 400 - 3rd Avenue S.W.
Calgary, Alberta T2P 4H2
Phone: (403) 232-7100

Via Fax and Registered Mail

October 5, 2004

Pittsfield Generating Company, LP
1732 West Genesee Street
Syracuse, New York
13204 U.S.A.

Attention: Donald W. Scholl

Dear Sirs:

THIS IS EXHIBIT B
referred to in the Affidavit of
Henry H. Assen

Sworn before me this 6th
day of October, 2004

MELANIE FERSTER
A Commissioner for Oaths
in and for the Province of Alberta

MELANIE FERSTER
Commissioner for Oaths in and for
the Province of Alberta
Expiry Date: May 15, 2006

RE: Notice of Termination of the Natural Gas Purchase and Sale Agreement dated August 23, 1995, as amended to date (the "GPA") between Home Oil Company Limited which is now known as Devon Canada Corporation ("Devon") and Altresco Pittsfield, L.P. which is now known as Pittsfield Generating Company, L.P. ("PGC")

On June 7, 2004, PGC informed Devon that it had entered into termination agreements (the "Termination Agreements") with Commonwealth Electric Company and Cambridge Electric Light Company, respectively, with respect to the Power Sale Agreements (the "PSAs") with those two companies. Devon subsequently received copies of those Termination Agreements and commenced action number 0401-10854 in the Court of Queen's Bench of Alberta, Judicial District of Calgary against PGC and others (the "Alberta Action").

In the Statement of Claim in the Alberta Action, Devon has stated that the provisions of the GPA and the gas supply provided by Devon thereunder are inextricably linked to the PGC cogeneration plant and to the PSAs such that the unilateral termination of the PSAs is conduct on the part of the Defendants in the Alberta Action which evinces an intention on their part not to be bound by the GPA. Devon made it clear on the public record in the Alberta Action that it accepts such repudiation and therefore will consider itself to be discharged from all of its obligations under the GPA as of the effective date of the termination under the Termination Agreements (the "Effective Date").

Furthermore, Devon has on September 15, 2004, given notice to the "relevant assignee", namely Shawmut Bank Connecticut National Association, under the terms of the Consent and Agreement dated as of October 23, 1995, among Devon, PGC and others, of Devon's intention to terminate effective as of the Effective Date (the "September 15th Notice"). A copy of the September 15th Notice was provided to PGC.

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We have learned that the Effective Date was October 1, 2004. Accordingly, we hereby give you notice that effective 8:00 a.m. (Calgary time) on October 8, 2004, Devon shall cease deliveries at the Empress delivery point under the GPA. This notice to you is not only notice of Devon's ceasing to make deliveries under the GPA, but also notice of its acceptance of your repudiation of the GPA and the termination of further performance thereunder by Devon. This letter, therefore, is a repetition of the previous notices to you given in the Statement of Claim in the Alberta Action and in the September 15th Notice. The reasons for the termination of deliveries and of Devon's performance under the GPA, are as set forth in the Statement of Claim in the Alberta Action.

Based on PGC's actions and the statements made on its behalf to date in the context of the Alberta Action, Devon understands that PGC does not agree that Devon's performance under the GPA can be terminated and therefore does not agree with Devon's ceasing deliveries thereunder as set forth above. Under these circumstances, Devon intends to proceed expeditiously with the Alberta Action to seek the declaratory relief claimed therein in order to confirm the validity of the steps that it has taken.

Yours truly,

DEVON CANADA CORPORATION

Per:

Henry Assen, Vice President, Marketing

Action No. 0401-10854

2004

IN THE COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

DEVON CANADA CORPORATION

Plaintiff

- and -

PE-PITTSFIELD, LLC and PUREENERGY I, LLC, both carrying on business under the firm name and style of PITTSFIELD GENERATING COMPANY, LP and the said PITTSFIELD GENERATING COMPANY, LP, ALTRESCO, INC. (sometimes known as ALTRESCO INCORPORATED) carrying on business under the firm name and style of PITTSFIELD GENERATING COMPANY, LP (formerly known as ALTRESCO PITTSFIELD, LP) and the said PITTSFIELD GENERATING COMPANY, LP (formerly known as ALTRESCO PITTSFIELD, LP)

Defendants

AFFIDAVIT
DEPONENT: Henry Assen
SWORN OCTOBER 6, 2004

CARSCALLEN LOCKWOOD LLP
Barristers and Solicitors
1500, 407 - 2nd Street SW
Calgary, Alberta T2P 2Y3

Attention: Stanley Carscallen, Q.C and
Catherine A. Crang
Telephone: (403) 262-3775
File No. 16798

